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OFFICE OF PETITIONS

In re Application of
Richard Henry
Application No. 09/869,700
Filed: September 4, 2001
Attorney Docket No. 03000018AA

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b)¹, filed June 13, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The instant application became abandoned on August 8, 2002, for failure to submit within three months, a proper and timely response to the Final Office action mailed on May 7, 2002. Accordingly, a Notice of Abandonment was mailed December 19, 2002.

In response to the Final Office Action mailed May 7, 2002, petitioner has submitted a continuation application pursuant to 37 CFR 1.53(b), application no. 11/149,506, filed June 10, 2005.

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

37 CFR 1.53(b)(1) was amended to provide that the prior application of a CPA must be: (1) a utility or plant application that was filed under 35 U.S.C. 111(a) before May 29, 2000, (2) a design application, or (3) the national stage of an international application that was filed under 35 U.S.C. 363 before May 29, 2000. See *Changes to Application Examination and Provisional Application Practice*, final rule: 65 Fed. Reg. 50092 (August 16, 2000), 1238 Off. Gaz. Pat. Office 13 (September 5, 2000); interim rule: 65 Fed. Reg. 14865, 14872 (March 20, 2000), 1233 Off. Gaz. Pat. Office 47, 52 (April 11, 2000).

The prior application was filed September 4, 2001 under 35 USC 371 and the corresponding international application, PCT/CA00/00003 was filed May 1, 2000. In view thereof, application no. 11/149,506, filed June 10, 2005 is a proper continuation application and thus a proper reply to the Final Office Action mailed May 7, 2002 and satisfies the requirements for revival under 37 CFR 1.137(b).

This matter is being referred to Technology Center 1614 for processing of the continuation application filed June 10, 2005.

Telephone inquiries related to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.



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